

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

NASSER HAMEDANI, an individual doing )  
business as GLOBAL VISION )  
UNLIMITED, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BAYER CORPORATION, an Indiana )  
Corporation, BAYER HEALTHCARE )  
LLC, a Delaware Limited Liability )  
Company, )  
 )  
Defendants. )  
 )

**Case No. C 05 02781 MJJ**

**STIPULATION AND ~~PROPOSED~~**  
**PROTECTIVE ORDER**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel of record for Plaintiff, Nasser Hamedani ("Hamedani"), and Defendants, Bayer Corporation and Bayer HealthCare LLC (collectively, "Bayer"), that there is good cause, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, for the entry of a protective order in this action for the reasons set forth below.

IT IS FURTHER STIPULATED AND AGREED that the discovery that is anticipated will encompass confidential marketing and financial data, future business plans, confidential customer information and trade secrets, which, if disclosed without adequate controls, would put the disclosing party at a commercial disadvantage. Accordingly, the parties believe a Protective Order is necessary in order to control the disclosure of confidential information among the parties. Further, Hamedani and Bayer have agreed, as set forth in more detail below, to act in good faith in designating confidential information as “HIGHLY CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” in recognition of the public policy disfavoring the filing of documents under seal.

1 IT IS FURTHER STIPULATED AND AGREED, by and between the undersigned  
2 counsel of record for Hamedani and Bayer, and subject to the approval of the Court, that if in the  
3 course of these proceedings either party or any third-party witness has occasion to disclose  
4 information designated by such party as “Protected Information” (as defined below), the  
5 following procedures shall be employed and the following restrictions shall govern:

6 1. This Stipulated Protective Order (“Order”) applies to all documents, information,  
7 tangible things, and testimony disclosed during discovery in this action (“Discovery Material”)   
8 by a party in this action or by a third party (“Disclosing Party”) to another party(ies) (“Receiving  
9 Party”), including all portions of transcripts of depositions, exhibits, answers to interrogatories,  
10 responses to requests for admission, documents or things, that are designated by the Disclosing  
11 Party in accordance herewith as containing or comprising confidential or proprietary information  
12 within the meaning of Fed. R. Civ. P. 26(c)(7) (hereinafter “Protected Information”) as more  
13 fully set forth herein.

14 2. “Highly Confidential Information” and “Attorneys’ Eyes Only Information” mean  
15 Protected Information of the type contemplated by Fed. R. Civ. P. 26, and which has not been  
16 made public by the Disclosing Party and which the Disclosing Party regards as proprietary, as  
17 more fully defined in Paragraphs 4 and 7.

18 3. Unless the parties agree in writing otherwise, all Discovery Material containing  
19 Protected Information shall be used solely in connection with the claims or defenses in this  
20 action. Any such Discovery Material containing Protected Information shall not be used for any  
21 business, commercial, competitive, personal, or other purpose. Protected Information shall not  
22 be disseminated to anyone, nor made public, nor used, except as permitted by this Stipulated  
23 Protective Order or by order of the Court. Nothing in this Order shall restrict a Disclosing Party  
24 in any manner with regard to use or disclosure of its own Protected Information.  
25

1           4.       A Disclosing Party may designate as “Highly Confidential” any Discovery  
2 Material that contains Protected Information, including, but not limited to, confidential financial  
3 and business information or other proprietary business or technical information of either its own  
4 or of another which the Disclosing Party is under a duty to maintain highly confidential. Highly  
5 Confidential Information as used in this Order shall refer to any so designated material and all  
6 copies thereof, and shall also refer to the information contained in such materials. No  
7 designation shall be made unless counsel of record believes in good faith that the designated  
8 material is entitled to protection under Fed. R. Civ. P. 26.  
9

10           5.       Except as provided in Paragraph 10, all documents containing Highly  
11 Confidential Information shall be marked at the time that copies are produced to a Receiving  
12 Party with the legend “HIGHLY CONFIDENTIAL” stamped or labeled on each page (or on the  
13 first page only of a bound document) in a manner so as not to interfere with the legibility thereof.

14           6.       Discovery Materials designated as Highly Confidential shall be maintained in  
15 confidence by the Receiving Party pursuant to the requirements of Paragraph 3 herein, and shall  
16 not be disclosed to any person except:

17                   (a) the Court and its officers, under seal, following a granting of a motion to file  
18 under seal pursuant to Local Rule 79-5;

19                   (b) lead and local counsel of record and employees of such counsel of record;

20                   (c) in-house counsel and their support staff; and

21                   (d) third parties engaged by counsel or the parties to assist in this litigation  
22 provided that such third party has signed an undertaking in the form of Exhibit A hereto  
23 (copies of which signed declaration shall be provided to the other parties herein only  
24 upon a showing of good cause).  
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1           7.       A Disclosing Party may designate as “Attorneys’ Eyes Only” any Discovery  
2 Material that contains Protected Information that constitutes trade secret or other proprietary  
3 competitive information that the Disclosing Party believes in good faith should not be disclosed  
4 to persons other than lead and local counsel of record, employees of such counsel of record, and  
5 independent experts or consultants. Attorneys’ Eyes Only Information shall refer to any so  
6 designated material and all copies thereof and shall also refer to the information contained in  
7 such materials. No designation shall be made unless counsel of record believes in good faith that  
8 the designated material is entitled to protection under Rule 26 of the Federal Rules of Civil  
9 Procedure and the standard set forth herein.  
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11           8.       All documents containing Attorneys’ Eyes Only Information shall be marked at  
12 the time that copies are produced to a Receiving Party with the legend “ATTORNEYS’ EYES  
13 ONLY” stamped or labeled on each page (or on the first page only of a bound document) in a  
14 manner so as not to interfere with the legibility thereof.

15           9.       Discovery materials designated as Attorneys’ Eyes Only shall be maintained in  
16 confidence for use by litigation counsel who must have access to such documentation solely for  
17 use in connection with this action and shall not be disclosed to any person except:

18                   (a) the Court and its officers, under seal following a granting of a motion to file  
19 under seal pursuant to Local Rule 79-5;

20                   (b) lead and local counsel of record and employees of such counsel of record; and  
21

22                   (c) third parties engaged by counsel or the parties to assist in this litigation  
23 provided that such third party has signed an undertaking in the form of Exhibit A hereto  
24 (copies of which signed declaration shall be provided to the other parties herein only  
25 upon a showing of good cause).

1           10.     When producing files and records for inspection, no marking need be made by the  
2     Disclosing Party in advance of the inspection. For purposes of the inspection by the Receiving  
3     Party, all documents produced shall be considered as “Attorneys’ Eyes Only.” Thereafter, upon  
4     selection of specified documents for copying by the Receiving Party, or should the Disclosing  
5     Party copy and produce documents directly without an initial inspection, the Disclosing Party  
6     shall mark the documents as provided for in Paragraphs 5 and 8.

7           11.     Specific testimony at a deposition may be designated “Highly Confidential” or  
8     “Attorneys’ Eyes Only” by making a statement to that effect on the record at the deposition.  
9     Categories of deposition testimony containing Protected Information may also be designated at  
10    the deposition if it appears in good faith that, based on the question or series of questions, the  
11    answer(s) will involve topics appropriate for such designations, and it would be more efficient to  
12    designate by categories. If testimony at a deposition is designated Highly Confidential or  
13    Attorneys’ Eyes Only, only those persons who may have access to such Protected Information,  
14    under the terms of this Order, may be in attendance to hear that testimony.

15           12.     The Disclosing Party shall require that the court reporter provide separate  
16    transcript volumes for the “Highly Confidential” and “Attorneys’ Eyes Only” portions of the  
17    transcript. A Disclosing Party designating hearing or deposition testimony as “Highly  
18    Confidential” or “Attorneys’ Eyes Only” shall have the covers of such volumes of the transcript  
19    separately labeled by the court reporter with the respective legends in materially the following  
20    forms:  
21

22           "HIGHLY CONFIDENTIAL — THIS PORTION OF THIS TRANSCRIPT  
23           CONTAINS INFORMATION WHICH HAS BEEN DESIGNATED HIGHLY

1 CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER IN THIS  
2 ACTION.”

3 or

4 “ATTORNEYS’ EYES ONLY — THIS PORTION OF THIS TRANSCRIPT  
5 CONTAINS INFORMATION WHICH HAS BEEN DESIGNATED  
6 ATTORNEYS’ EYES ONLY PURSUANT TO THE PROTECTIVE ORDER IN  
7 THIS ACTION.”

8  
9 13. Within a 30-day period after receipt by the Disclosing Party of the deposition or  
10 hearing transcript, counsel for the Disclosing Party shall have the opportunity to review the  
11 transcript and correct any mis-designations and shall make any additional designations by page  
12 and line number believed in good faith to constitute Protected Information. Counsel for the  
13 Disclosing Party shall notify, in writing, the court reporter and the Receiving Party within such  
14 30-day period of such corrections or additional designations. Prior to the expiration of the 30-  
15 day period, counsel for the Receiving Party shall retain and treat any non-designated portions of  
16 the transcript as Attorneys’ Eyes Only Information (except that the witness deposed may be  
17 furnished with a copy of his transcript).

18 14. A Receiving Party may show any employee of the Disclosing Party a document  
19 designated by the Disclosing Party as Protected Information for the purpose of interrogation at a  
20 deposition or hearing.

21 15. Neither anything in this Order nor acceptance by a party of information disclosed  
22 pursuant to this Order shall constitute or be construed as an acknowledgement or admission that  
23 any Discovery Materials designated by a Disclosing Party as such are in fact Protected  
24 Information or entitled to confidential treatment. This Order shall be without prejudice to either  
25 party to question at any time whether or not any particular information is Protected Information.

1           16. If a party designates any Discovery Material as Protected Information, and the  
2 Receiving Party objects in writing that the designation is not warranted or justified as to all or  
3 any part of the designated material, the Disclosing Party, in compliance with any orders by the  
4 Court, shall confer in good faith, in person or by telephone, with the Receiving Party to  
5 reconsider the challenged designation. If, after conferring, the Receiving and Disclosing Parties  
6 are unable to reach agreement as to the challenged designation, then the objecting party may file  
7 a motion for a determination by the Court as to the unresolved objections and the appropriateness  
8 of the challenged designation. If the objecting party does not file a motion challenging the  
9 designation within sixty (60) days from the date the Receiving and Disclosing Parties first confer  
10 on the issue, and unless otherwise ordered by the Court, the challenged designation shall stand.  
11 The Disclosing Party shall have the burden of proving the propriety of the challenged  
12 designation.  
13

14           17. Nothing in this Order shall preclude any Receiving Party, or any other person who  
15 is bound by this Order, from utilizing information that was known to or possessed by the  
16 Receiving Party or other person before the Receiving Party or other person became bound by this  
17 Order, or which lawfully came into the Receiving Party's or other person's possession outside of  
18 the discovery process in this action. Any such use of such information shall not constitute a  
19 violation of this Order. Nevertheless, each Disclosing Party retains the right to pursue any claim  
20 or defense it may have against any Receiving Party or other person arising from such use of such  
21 information. However, if a Disclosing Party disputes the Receiving Party's or other person's  
22 position, it shall object in writing, and shall proceed as set forth in Paragraph 16 hereto. If the  
23 Court determines that, consistent with Fed. R. Civ. P. 26(c)(7) and the provisions of this  
24 Stipulated Protective Order, the information in question appears to be of a type that should be  
25

1 characterized as Protected Information, then any Receiving Party or other person claiming that  
2 the information has been in the possession of such Receiving Party or other person or has been in  
3 the public domain prior to disclosure of such information through discovery, shall have the  
4 burden of proving such public knowledge.

5 18. Should any party to this litigation obtain documents or information from a third  
6 party, by subpoena or otherwise, that contain, or can reasonably be assumed to be, or with  
7 respect to which it has been advised contains, Protected Information of a party to this litigation,  
8 such documents or information shall be treated by the Receiving Party as Highly Confidential  
9 Information or Attorneys' Eyes Only Information under this Order, as appropriate, unless  
10 expressly released in writing by the party that is the owner of such Protected Information or  
11 otherwise ordered by the Court.

12 19. Any documents that are filed with the Court which contain Highly Confidential  
13 Information or Attorneys' Eyes Only Information may be filed under seal in accordance with the  
14 Court's order granting the filing party's application pursuant to Local Rule 79-5 and in  
15 accordance with the criteria set forth in Local Rule 79-5. All such documents shall be filed in a  
16 sealed envelope bearing title of the case, the case number, the title of the document and the  
17 following statement:  
18

19 CONFIDENTIAL

20 This envelope contains confidential information and is filed pursuant to the  
21 Stipulated Protective Order dated \_\_\_\_\_, 2006. The confidentiality of the  
22 material is to be maintained and the envelope is not to be opened, or the  
23 contents revealed to any individual, except by order of the Court.

24 20. If Protected Information is disclosed to any person other than in the manner  
25 authorized by this Order, the party responsible for the disclosure must: (a) immediately bring all



1 pertinent facts relating to such disclosure to the attention of all counsel of record and, (b) without  
2 prejudice to other rights and remedies of the Disclosing Party, make reasonable efforts to prevent  
3 further disclosure of the Protected Information by the person who improperly received such  
4 information.

5         21. The inadvertent or unintentional failure to designate discovery materials as Highly  
6 Confidential or Attorneys' Eyes Only shall not be deemed a waiver in whole or in part of a  
7 Disclosing Party's claim of confidential treatment under the terms of this Order. If a document,  
8 transcript, or thing is produced for which the designation "Highly Confidential" or "Attorneys'  
9 Eyes Only" is lacking but should have appeared, the Disclosing Party may restrict future  
10 disclosure of the document, transcript, or thing in accordance with this Order by notifying the  
11 Receiving Party in writing of the change in or addition of such restrictive designation with  
12 respect to the document, transcript, or thing, and providing substitute copies, with appropriate  
13 designations, of each such document, transcript, or thing. The Receiving Party shall then take  
14 reasonable steps to prevent any further disclosure of such newly designated Protected  
15 Information, except as permitted by this Order, and shall, within ten (10) business days of receipt  
16 of the substitute copies, return or destroy the originally produced items and all copies.

17  
18         22. Any person in possession of another party's Protected Information who receives a  
19 subpoena (or other process) from any person (including natural persons, corporations,  
20 partnership, firms, governmental agencies, departments or bodies, boards, or associations) that is  
21 not a party to this Order seeking production or other disclosure of such Protected Information  
22 shall, if not otherwise prohibited by law, give prompt written notice to counsel for the party or  
23 nonparty who produced and/or designated the materials as Protected Information, identifying the  
24 material sought and enclosing a copy of the subpoena or other process. Where possible, at least  
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ten (10) business days' notice before production or other disclosure shall be given. In no event shall production or disclosure be made before the latest of: (1) the date on which the notice is given, or (2) the return date of the subpoena or other process. The party receiving the subpoena (or other process) shall reasonably cooperate with efforts by the Disclosing Party to oppose production pursuant to the subpoena or to condition production upon the imposition of conditions to protect against public disclosure of the Protected Information. Further, if production pursuant to the subpoena or other process is required before reasonable notice can be given to counsel for the party or nonparty who produced and/or designated the material sought, counsel for the party receiving the subpoena shall object in writing to the production by stating that the Protected Information sought has been designated "Highly Confidential" or "Attorneys' Eyes Only."

23. Nothing herein shall be construed to affect in any way the admissibility of any document, testimony or other evidence.

24. Within thirty (30) days of final termination of this action, including any appeals (or such other amount of time on which counsel mutually agree), each Receiving Party shall be under obligation to assemble and return to the Disclosing Party, or alternatively, upon mutual agreement of the parties and counsel, to destroy and provide a certificate of destruction of, all Protected Information received, directly or indirectly, from the Disclosing Party, including all copies of such material which may have been made. The return of such material shall be acknowledged by the Disclosing Party in writing. Furthermore, counsel shall destroy all copies with any attorneys' markings, and any digests or summaries thereof which have been made, or prepared from such documents in the course of creating attorney work product. Notwithstanding

1 the foregoing, a single copy of such Protected Information may be retained for archival purposes  
2 only in outside counsel's files.

3 25. Notwithstanding the foregoing provisions, this Stipulated Protective Order shall  
4 be without prejudice to the right of any party to challenge the propriety of discovery on grounds  
5 of privilege, relevance, materiality, undue burden, or as is otherwise provided for under Fed. R.  
6 Civ. P. 26. Nothing contained herein shall be construed as a waiver of any objection which  
7 might be raised as to the admissibility at trial of any documents produced or information  
8 obtained during the discovery process.  
9

10 26. This Stipulated Protective Order shall be without prejudice to the right of any  
11 party to apply to the Court for relief from this Order as justice may require.

12 27. This Court shall retain jurisdiction to enforce the terms of this Stipulated  
13 Protective Order for six (6) months after the final termination of this action.

14 Dated: April 4, 2006

/s/ Kevin R. Martin

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19 Dated: April 4, 2006

/s/ Angela K. Steele

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Facsimile: (925) 945-1975

IT IS SO ORDERED:

Dated: April 11, 2006



United States District Judge

EXHIBIT A

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

NASSER HAMEDANI, an individual doing )  
business as GLOBAL VISION )  
UNLIMITED, )

Plaintiff, )

vs. )

BAYER CORPORATION, an Indiana )  
corporation, BAYER HEALTHCARE LLC, )  
a Delaware Limited Liability Company, )

Defendants. )

**Case No. C 05 02781 MJJ**

**NON-DISCLOSURE AGREEMENT  
PURSUANT TO STIPULATION  
AND PROTECTIVE ORDER**

I am employed as \_\_\_\_\_ [position] by \_\_\_\_\_, [name of  
employer], located at \_\_\_\_\_ [address]. I  
acknowledge that I have read the Protective Order entered by the Hon. Martin J. Jenkins on  
\_\_\_\_\_, 2006 in the action entitled *Nasser Hamedani, an individual doing  
business as Global Vision Unlimited v. Bayer Corporation and Bayer Healthcare LLC* Case No.  
C05-02781 MJJ (N.D. Cal.), that I understand the terms thereof, and that I agree to be bound by  
such terms. I agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California, San Francisco Division, if any disputes arise over my use of the  
information I receive pursuant to this Non-Disclosure Agreement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the  
United States of America that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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